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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,296	07/10/2003	David Brault	84215-202 ADB	1602

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CANADA

EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,296

Applicant(s)

BRAULT ET AL.

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8 and 19-26 is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-16 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Objections

Claims 10, 14, are objected to because of the following informalities:

In claim 10, line 4, "the posts" should probably be --the plurality of vertical posts--.

In claim 14, lines 2, 3, and 4, "wall" should probably be --side wall--.

in claim 19, lines 24 and 26, "the fan housings" lacks antecedent basis.

Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3, 9, and 19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/616,298. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to a greenhouse with multiple air handling systems.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-7, 10, and 11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Takano (JP2000-69858) in view of Wi (US 5,438,794).

As to claim 1, Takano discloses a greenhouse comprising (Figs. 1 and 2) an exterior wall structure (shown in Figs. 1 and 2); a plurality of elongate benches (Figs. 1 and 2) located in the interior and provided to support crop material; an air handling system including at least one air moving fan (6 of Fig. 1), at least one interior air intake (13 of Fig. 2), at least one interior air outlet (another of the 8A of Fig. 2), at least one exterior vent (12 of Fig. 1), and at least one component to change the air temperature 14 of Figs. 1 and 2); each bench having a bench support (shown in Fig. 1); the benches arranged in a spaced position along one of the sidewalls (Fig. 2) with one end adjacent to a sidewall (Figs. 1 and 2) and extending at a right angle to an opposite sidewall (Fig. 2). Not disclosed is the exterior wall structure with transparent panels and defined by a plurality of vertical posts, each bench associated with a span between posts, the spans between the vertical posts being equal. Wi, however, discloses a greenhouse with the exterior wall structure with transparent panels (shown in Fig. 1 for the far sidewall) and defined by a

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plurality of vertical posts (shown in Fig. 1 for the far sidewall), each bench associated with a span between posts (in that in Fig. 1 there are ten "benches" (i.e., growing regions) and 10 spans, excluding the two de minimis, triangular spans at the bottom corners). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the greenhouse of Takano by having the wall structure and bench spacing as disclosed by Wi so as to meet the needs of the grower and to have the spans equal in size depending upon strength requirements of the structure.

As to claim 2, Takano as modified by Wi further disclose the benches' width substantially the width of the wall span (see Fig. 1 of Wi).

As to claim 4, Takano as modified by Wi further disclose the third and fourth sidewalls at right angle to the sidewalls (that are similar to endwalls) and the length of the benches is the length of multiple spans (Fig. 1 of Wi). Not disclosed are the first through fourth side walls having same spans between posts. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi by having the first through fourth side walls having the same spans between vertical posts so as to meet the strength requirements of the structure.

As to claim 5, Takano as modified by Wi further disclose the benches located such that one end at one sidewall has an opposed end spaced from the opposite wall (Fig. 2 of Takano).

As to claim 6, the limitations of Claim 1 are disclosed as described above. Not disclosed is the span being six feet. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi by having the span six feet so as to meet the needs of the grower.

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As to claim 7, Takano as modified by Wi further disclose the panels attached at their edges to the posts and spanning the distance between posts (Fig. 1 of Wi).

As to claim 10, the limitations of Claim 1 are disclosed as described above. Takano as modified by Wi further disclose a alley way outside of a wall and parallel the wall (see Fig. 2 of Takano). Not disclosed is the alley way formed outside the opposite wall, equal to the width of a span, and the first through fourth side walls having the same spans between vertical posts. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi by having the alley way formed outside the opposite wall so as to meet the needs of the grower and to equal to the width of a span, and the first through fourth side walls having the same spans between vertical posts so as to meet the strength requirements of the structure.

As to claim 11, the limitations of Claim 1 are disclosed as described above. Takano as modified by Wi further discloses a doorway with a door panel (see Fig. 2 of Takano) and third and fourth sidewalls at right angle to the sidewalls (Fig. 1 of Wi). Not disclosed is the doorway the width of one span and mounted between posts; and, first through fourth side walls having same spans between posts. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi by having the doorway the width of one span and mounted between posts and to have the first through fourth side walls having the same spans between vertical posts so as to strengthen the structure and to meet the needs of the grower.

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Claim 3 is rejected under 35 U.S.C. §103(a) as being unpatentable over Takano (JP2000-69858) in view of Wi (US 5,438,794) in further view of Fleisher et al. (CA 1260270 A).

As to claim ³~~4~~, Takano discloses a greenhouse comprising (Figs. 1 and 2) an exterior wall structure (shown in Figs. 1 and 2); a plurality of elongate benches (Figs. 1 and 2) located in the interior and provided to support crop material; an air handling system including at least one air moving fan (6 of Fig. 1), at least one interior air intake (13 of Fig. 2), at least one interior air outlet (another of the 8A of Fig. 2), at least one exterior vent (12 of Fig. 1), and at least one component to change the air temperature 14 of Figs. 1 and 2); each bench having a bench support (shown in Fig. 1); the benches arranged in a spaced position along one of the sidewalls (Fig. 2) with one end adjacent to a sidewall (Figs. 1 and 2) and extending at a right angle to an opposite sidewall (Fig. 2) with their widths narrower than that of the spans. Not disclosed is the exterior wall structure with transparent panels and defined by a plurality of vertical posts, each bench associated with a span between posts, the spans between the vertical posts being equal; and, the benches mounted for side to side sliding movement. Wi, however, discloses a greenhouse with the exterior wall structure with transparent panels (shown in Fig. 1 for the far sidewall) and defined by a plurality of vertical posts (shown in Fig. 1 for the far sidewall), each bench associated with a span between posts (in that in Fig. 1 there are ten "benches" (i.e., growing regions) and 10 spans, excluding the two de minimis, triangular spans at the bottom corners); and, Fleisher et al. discloses benches with side to side movement (Figs. 1 and 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the greenhouse of Takano by having the wall structure and bench spacing as disclosed by Wi so as to meet the needs of the grower and to have the spans equal in size depending upon strength

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requirements of the structure and to have the benches with side to side movement as disclosed by Fleisher et al. so as to increase bench space.

Claims 12-16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Takano (JP2000-69858) in view of Wi (US 5,438,794) in further view of Freeman, Sr. (US 4,146,993).

As to claim 12, the limitations of Claim 1 are disclosed as described above. Takano as modified by Wi further disclose third and fourth sidewalls at right angle to the sidewalls (Fig. 1 of Wi). Not disclosed is an electrical system for controlling the air handling including at least one cabinet, the cabinet the width of one span; and, first through fourth side walls having same spans between posts. Freeman, Sr., however, discloses a cabinet (22 of Fig. 1) used to control the electrical system of greenhouse that is equal to the span (Fig. 2) and a integral panel (in that cabinet is integrated with the wall). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi by having the cabinet used to control the electrical system of greenhouse, in the instant application the air system, that is equal to a span as disclosed by Freeman Sr. so as to strengthen the structure and to meet the needs of the grower and to have the first through fourth side walls having the same spans between vertical posts so as to strengthen the structure and to meet the needs of the grower.

As to claim 13, the limitations of Claim 12 are disclosed as described above. Not disclosed is a plurality of electrical cabinets, each the width of one span. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi and Freeman Sr. by having a plurality of cabinets used

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to control the electrical system of the greenhouse so as to strengthen the structure and to meet the needs of the grower.

As to claim 14, the limitations of Claim 12 are disclosed as described above. Takano as modified by Wi further disclose a alley way outside of a wall and parallel the wall (see Fig. 2 of Takano). Not disclosed is the alley having the width of one span and the integral panel spanning two posts formed outside of the second wall. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi and Freeman Sr. by having the alley having the width of one span and the integral panel spanning two posts and to have on the second side wall so as to strengthen the structure and to meet the needs of the grower.

As to claims 15 and 16, the limitations of Claim 12 are disclosed as described above. Not disclosed is the integral panel defined by the cabinet and wall panel portions along at least one side and the integral panel fastened to two posts. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi and Freeman Sr. by having the integral panel defined by the cabinet and wall panel portions along at least one side and the integral panel fastened to two posts so as to strengthen the structure and to meet the needs of the grower.

Allowable Subject Matter

Claims 8, 19-26 are allowed.

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Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

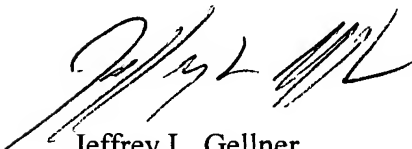
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Baumgartner and Runser disclose in the prior art various greenhouse benches with sideways movement.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey L. Gellner
Primary Examiner
Art Unit 3643